In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-281

HENRY B. WALLACE AND BETTY J. WALLACE,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A26–A34) is reported at 439 F. 2d 757. The Memorandum and Order of the district court (Pet. App. A1–A25) is reported at 309 F. Supp. 748.

JURISDICTION

The judgment of the Court of Appeals was entered on March 19, 1971. The petition for a writ of certiorari was filed on June 14, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

441-496—71

QUESTION PRESENTED

Whether the courts below correctly determined that petitioner realized a taxable gain upon the transfer of certain shares of capital stock to his former wife, pursuant to a divorce decree.

STATUTES INVOLVED

Sections 1001 and 1002 of the Internal Revenue Code of 1954 (26 U.S.C.) and Section 598.14 of the Code of Iowa, 1962, are set forth at Pet. 3–4.

STATEMENT

In 1963, petitioner and his former wife, Florence, were divorced in the District Court of Polk County, Iowa. Petitioner transferred certain property, including capital stock that he had acquired chiefly by gift from his mother, to Florence in satisfaction of her marital rights (Pet. App. A9–A12). Subsequently, petitioner was assessed more than $47,000 in taxes on the gain allegedly realized on the stock transfer, based on the difference between his cost basis of this stock and its value as of the date of the transfer (Pet. App. A11). Petitioner thereafter paid the tax and brought this refund action.

Petitioner and Florence entered a property settlement stipulation under which they agreed that certain property and money should be paid to Florence by the petitioner, but specifically excluding any division of the stock here in question (Pet. App. A4–A7). The stipulation was subject to the approval of the divorce court, in accordance with Iowa law (Section 598.14, Code of Iowa, 1962). The divorce court then awarded

Florence a divorce and approved the stipulation, and in addition ordered petitioner to transfer the stock to Florence (Pet. App. A7–A10).

The government thereafter assessed petitioner on the income that it alleged he realized on the stock transfer. In the government's view, the transfer of this appreciated property was a taxable event which, under the rule of *United States* v. *Davis*, 370 U.S. 65, resulted in taxable gain to petitioner. The district court agreed that *Davis* was controlling and required a decision for the government, and the court of appeals affirmed.[1]

ARGUMENT

The decision below is correct. There is no conflict or other reason for further review by this Court.

1. The *Davis* decision is squarely in point and controls the disposition of this case, as the courts below concluded. There, this Court held that the transfer of appreciated property from a husband to his wife in connection with a divorce is a taxable event, where prior to the transfer the wife did not

[1] The courts below also sustained an assessment against petitioner based on the dividends paid on the stock during 1963, despite the fact that the state divorce court ordered that Florence pay the taxes on that income (Pet. App. A14–A15, A33–A34). Petitioner does not present that issue as a separate reason for granting the writ of certiorari, though he states that resolution of the *Davis* question will determine the dividend question as well (Pet. 9, n. 2). While we believe petitioner is liable in any event for the taxes on the dividends, see *Helvering* v. *Horst*, 311 U.S. 112, and *Hyman* v. *Nunan*, 143 F. 2d 425 (C.A. 2), we will not discuss this further, since petitioner has not briefed the issue.

possess rights in the property which "reach[ed] the dignity of co-ownership" (370 U.S. at 70). Petitioner acquired the stock here in his own name, principally by gift from his mother. The courts below concluded that under Iowa law, Florence did not have any ownership interest in this stock until the divorce court ordered it transferred to her, under Iowa Code Section 598.14. This case, then, presents precisely the same issue as *Davis,* and the courts below correctly decided it on that authority.

2. Contrary to petitioner's assertion (Pet. 7–17), the decision below does not conflict with *Collins* v. *Commissioner,* 412 F. 2d 211 (C.A. 10). To be sure, the Tenth Circuit there held that a husband's transfer of property to his wife in settlement of her rights pursuant to a divorce was not a taxable transaction. But *Collins* was predicated on an Oklahoma Supreme Court decision that under the laws of that state, a wife has essentially common ownership rights, together with her husband, in the marital property (see *Collins* v. *Oklahoma Tax Commission,* 446 P. 2d 290, 295 (Okla.)). Both courts below concluded that Iowa law simply is not the same in this respect, so that *Collins* "is clearly distinguishable on its facts" (Pet. App. A32; Pet. App. A23). Moreover, this is consistent with *Davis,* where this Court expressly recognized that its holding was grounded on property rights defined by state law and might well differ in accordance with differences in local property law rules (370 U.S. at 71). Indeed, the Tenth Circuit in *Collins* distinguished *Davis* on this basis, that ap-

plicable state law (Oklahoma) differed from the state law (Delaware) involved in *Davis* (412 F. 2d at 212).[2]

3. Nor is there merit to petitioner's contention that the *Davis* rationale does not apply here because the stock transfer was ordered by the divorce court, after the spouses had stipulated that petitioner would transfer other property to Florence in full satisfaction of all her marital claims (Pet. 16–17). Both courts below rejected this argument, rightly we think, because the asserted distinction did not alter the fact that Florence had no ownership interest in the stock prior to the entry of the divorce decree, and thus under *Davis* the transfer was a taxable event (Pet. App. A19–A21, A32–A33).

4. Finally, petitioner asks this Court to overrule its decision in *Davis* because of the "discrimination, hardship and a thwarting of the equitable administration of state divorce laws" that it has caused (Pet. 18–22). The Court in *Davis* carefully considered claims of difficulty of administration (370 U.S. at 71–74) and

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[2] The Tenth Circuit had earlier held for the government in *Collins* v. *Commissioner*, 388 F. 2d 353 (1968). While the taxpayer's petition for certiorari from that decision was pending, the Oklahoma Supreme Court decided *Collins* v. *Oklahoma Tax Commission*, *supra*, whereupon this Court granted the petition, vacated the judgment, and remanded the case to the Tenth Circuit for further consideration. *Collins* v. *Commissioner*, 393 U.S. 215 (1968). In its subsequent *Collins* decision, the Tenth Circuit also distinguished its prior decision in *Pulliam* v. *Commissioner*, 329 F. 2d 97, that a transfer of property pursuant to a divorce decree under Colorado law was a taxable event, on the ground that the underlying state law in each case differed (412 F. 2d at 212).

discrimination as between common-law and community property states, and rejected them (370 U.S. at 68–71). As to petitioner's claim that *Davis* interferes with the equitable administration of state divorce proceedings, that decision concerns only the federal tax consequences of a transfer of appreciated property in a divorce proceeding, and does not place any restrictions whatsoever on state divorce courts. It is clear that the problems petitioner asserts are matters for remedial legislation, and therefore are for Congress, not this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971